

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM



NATIONAL NUCLEAR SECURITY ADMINISTRATION Office of General Counsel

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NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM

1. PURPOSE. The purpose of this National Nuclear Security Administration (NNSA) Policy (NAP) is to establish NNSA requirements and responsibilities for fulfilling the *National Environmental Policy Act* of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500-1508), and the Department of Energy (DOE) NEPA compliance procedures (10 CFR Part 1021). (Hereinafter, the latter two will be referred to as *the Regulations*.)
2. AUTHORITY. NEPA, the CEQ regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), and the DOE NEPA compliance procedures (10 CFR PART 1021).
3. CANCELLATION. None.
4. APPLICABILITY.
 - a. Federal. This policy applies to all NNSA elements, except as noted below in 4.c.(3).
 - b. Contractors. Does not apply to contractors.
 - c. Equivalencies/Exemptions.
 - (1) Equivalency. There are no equivalencies for NEPA. In some cases, NEPA requirements are integrated into processes associated with environmental remediation under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA). Some states have enacted statutes similar to NEPA; for activities involving state entities, NNSA may elect, on a case-by-case basis, to combine the federal and state review processes when state processes satisfy all CEQ, DOE, and NNSA requirements.
 - (2) Exemption. There are no exemptions from NEPA requirements; however, 10 CFR 1021.343 of the DOE NEPA regulations provide for variances associated with emergency actions; reduction of time periods; and when required by the interests of national security or the public health, safety, or welfare.
 - (3) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 United States Code sections 2406 and 2511, and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

5. SUMMARY OF CHANGES. Not applicable.
6. BACKGROUND. NEPA requires federal agencies to assess the environmental impact of all major federal actions affecting the quality of the human environment and to determine the significance of those impacts. The results of a NEPA analysis are meant to inform federal decisions on major actions. When a major federal action is contemplated, NNSA must determine the level of NEPA review required for the specific action and location. The appropriate level of NEPA review could be:
- a. A categorical exclusion (CX) from further requirements of NEPA,
 - b. An environmental assessment (EA) resulting in either the need for an environmental impact statement (EIS) or in a finding of no significant impact (FONSI) that then completes the NEPA review,
 - c. An EIS resulting in a record of decision (ROD),
 - d. A supplement analysis (SA) to determine whether further NEPA review is required or whether previous NEPA reviews appropriately cover the contemplated federal action, or
 - e. An EA or supplemental EIS to augment a previous NEPA review.

The requirements and responsibilities detailed in this NAP provide for efficient and effective implementation of NNSA's NEPA duties. A key responsibility for all participants is to maintain the quality of the NEPA process while controlling its cost and time to complete. Although contractors may assist in NNSA's NEPA implementation, the legal obligation to comply with NEPA belongs to NNSA. To the maximum extent possible, NEPA compliance activities should be integrated into program and project planning and associated decision-making processes. This Policy details the responsibilities of NNSA management and staff in the NEPA analysis process.

7. REQUIREMENTS.

In addition to requirements established in NEPA and the Regulations, NNSA's NEPA Compliance Program must include:

- a. A system of NEPA Compliance Officers (NCOs), supporting program offices and field offices.
- b. Efficient internal scoping procedures for SAs, EAs, and EISs that include development of a project management plan, schedule, description of draft and final documents, and (as appropriate) public participation plans, communication plans, and a contractor scope of work.
- c. A NEPA Document Manager (NDM) for each EA, EIS, and SA.
- d. A system for reporting lessons learned and encouraging continuous improvement.

- e. Procedures to complete NEPA reviews in an expeditious manner to avoid potential delays in project and program execution, and before decisions on whether to proceed with proposed activities have been made.
- f. Procedures for initiating NEPA reviews and making NEPA determinations.

8. RESPONSIBILITIES.

a. Administrator.

- (1) Approves NNSA-wide NEPA-related policies.
- (2) Delegates authority for NEPA compliance requirements, except as otherwise stated in this Policy, to heads of program or field offices.
- (3) Consults with and obtains concurrence on matters associated with NEPA compliance and implementation from NNSA General Counsel (NA-GC).
- (4) Determines that preparation of an EIS is appropriate or required.
- (5) Approves EISs and supplemental EISs prior to their publication. This authority may be delegated to the head of a program or field office, and may not be redelegated.
- (6) Signs and approves RODs and amended RODs (ARODs). This authority may be delegated to the head of a program office or field office, and may not be redelegated.

b. Heads of Program Offices and Heads of Field Offices.

- (1) Include in all new contracts and grants a provision that the awardee:
 - (a) May not undertake on NNSA's behalf an action that is subject to NEPA until NNSA has notified the awardee that NNSA has satisfied applicable NEPA requirements.
 - (b) Will implement an auditable system of internal controls to ensure that NEPA reviews are completed before decisions are made on the implementation or performance of proposed programs, projects, or other activities.
 - (c) Will perform an annual performance assessment on the internal NEPA completion controls compliance; report the results to the head of the program or field office; and provide access to all data and analyses associated with NEPA compliance activities.
 - (d) Report, as required by the NCO, on issues and activities that may require NEPA reviews.

- (2) Incorporate NEPA milestones in project planning documents.
- (3) Coordinate the Analysis of Alternatives process, and the NEPA process, for capital acquisitions.
- (4) Ensure that all documents associated with any part of the NEPA review process are free of protected information (including, but not limited to, Official Use Only, Unclassified Controlled Nuclear Information, and Controlled Unclassified Information), or that such information in documents is identified and the justification for withholding the information is provided.
- (5) When considering non-CX determinations, such as EAs, SAs, or EISs (if delegated), consult with the NCO and NNSA Counsel (NA-GC for program offices, Field Counsel for field offices).
- (6) With concurrence by NNSA Counsel (NA-GC for program offices, Field Counsel for field offices) determine that preparation of an EA is appropriate or required and notify NA-GC of the determination.
- (7) Determine that preparation of an SA is appropriate or required and notify NA-GC of the requirement.
- (8) Assign an NDM at the start of each SA.
- (9) Recommend to the Administrator that an EIS be prepared for a proposed action under the office's purview that may have significant impacts.
- (10) After an EA determination, prepare and issue an EA. In addition to meeting requirements established in the Regulations, responsibilities include:
 - (a) Notifying states and host tribes of the intent to prepare an EA.
 - (b) Assigning an NDM.
 - (c) Obtaining concurrence from the NCO on the technical adequacy of draft and final EAs, and adequacy from the standpoint of NEPA compliance.
 - (d) Obtaining concurrence from the NNSA Counsel (NA-GC for program offices, and Field Counsel for field offices) on the legal adequacy of an EA before it is approved.
 - (e) Obtaining concurrence from NNSA Counsel (NA-GC for program offices, and Field Counsel for field offices) that the impacts of a proposed action are significant and that a recommendation to

complete an EIS is required, or if the impacts are not significant then concurrence on any FONSI before it is issued.

- (f) With concurrence from NNSA Counsel (NA-GC for program offices, and Field Counsel for field offices), adopting another agency's or DOE element's EA and issuing a FONSI when appropriate. Responsibilities for approving and adopting EAs and issuing FONSIs may not be delegated.
 - (g) When a commitment to mitigation is essential to render the impacts of a proposed action not significant, preparing and approving a mitigation action plan for any such commitment before issuing the FONSI.
 - (h) Tracking and annually reporting progress made in implementing, and the effectiveness of, any commitment for environmental impact mitigation that is essential to render the impacts of a proposed action not significant.
 - (i) Ensuring implementation of commitments to minimize environmental impacts contained within project descriptions.
 - (j) Following completion of the NEPA review process, certifying completion of, and maintaining, the official administrative record (AR).
- (11) After an EIS determination, each head of program office or head of field office shall prepare an EIS and forward it to NA-GC for processing and coordination with NNSA Headquarters reviewers. Responsibilities for issuing RODs may not be delegated except as provided in this Policy. In addition to meeting requirements established in the Regulations, responsibilities include:
- (a) Assigning an NDM to coordinate preparation of the EIS in collaboration with the NCO.
 - (b) Consulting with NA-GC whenever contemplating whether to adopt another DOE Departmental Element's or federal agency's EIS.
 - (c) Submitting a draft notice of intent to prepare an EIS to NA-GC.
 - (d) Submitting draft notices of availability of draft and final EISs to NA-GC.
 - (e) Preparing any mitigation action plan required under the DOE Regulations before taking an action that is the subject of a mitigation commitment made in a ROD.

- (f) Tracking and annually reporting progress made in implementing, and the effectiveness of, any mitigation commitment made in a ROD.
 - (g) Following completion of the NEPA review process, certifying completion of, and maintaining, the official AR.
 - (12) When required by the Regulations, and in consultation with NNSA counsel (NA-GC for program offices and Field Counsel for field offices), prepare an SA.
 - (13) Based on the results of the SA and with concurrence by NNSA Counsel (NA-GC for program offices and Field Counsel for field offices):
 - (a) Determine that a new supplemental EIS is not required and no further NEPA analysis and documentation are required; or
 - (b) Recommend to the Administrator that a supplemental or a new EIS be prepared.
 - (c) Recommend to the Administrator that an AROD be approved.
 - (14) When appropriate, request from NA-GC a variance from the DOE NEPA Regulations, the DOE Policy, or this NNSA Policy.
 - (15) Incorporate NEPA values, such as analysis of cumulative, off-site, ecological, and socioeconomic impacts, to the extent practicable, in NNSA documents prepared under CERCLA.
- c. Heads of Field Offices.
 - (1) Maintain at least one NCO for the field office.
 - (2) Designate an NDM at the start of each EA, EIS, and SA.
- d. NNSA General Counsel (NA-GC).
 - (1) Designate and appoint NNSA Office of General Counsel NCOs, who also act as NCOs for the NNSA program offices.
 - (2) Approve NNSA-wide NEPA-related procedures and process descriptions, as appropriate.
 - (3) Provide NEPA compliance support to program offices, and field offices (as requested), including maintaining the NCOs for program offices.
 - (4) For an EIS:

- (a) As requested, provide support in submitting documents for publication in the *Federal Register* (examples include, but are not limited to, Notices of Intent and Notices of Availability).
 - (b) Coordinate approval of an EIS with the Administrator.
 - (c) Concur in the environmental content and legal adequacy of an EIS or ROD.
 - (5) Assist the Office of the Administrator in resolving disagreements among multiple offices concerning the assignment of responsibility for conducting the NEPA process for a proposed action.
 - (6) Maintain electronic copies of ARs for all NEPA processes requiring an AR.
 - (7) Submit to the Administrator appropriate variances from the DOE NEPA Regulations, the DOE NEPA Policy, or this Policy.
 - (8) Exercise the authority under 10 CFR 1021.343 to grant appropriate variances from the DOE NEPA regulations.
 - (9) Advise the Administrator on NNSA's NEPA compliance program.
 - (10) Assure NNSA compliance with this Policy.
- e. NNSA Field Counsel.
- (1) Consult with field offices and NCOs when they are considering non-CX determinations, such as EAs, SAs, or EISs (if delegated).
 - (2) Concur with field office determinations that preparation of an EA is appropriate or required.
 - (3) For an EA within the purview of the Field Office:
 - (a) Review and provide concurrence with field offices on the legal adequacy of an EA before it is approved.
 - (b) Review and provide legal concurrence on any FONSI before it is issued, or on a recommendation that completion of an EIS is required after an EA is finalized.
 - (c) Review and provide legal concurrence that adopting another agency's or DOE element's EA and issuing a FONSI is appropriate. Responsibilities for approving and adopting EAs and issuing FONSIs may not be delegated.

- (4) Consult with field offices when they are required by the Regulations to prepare an SA.
- (5) Concur with the field office's determination, based on the results of the SA:
 - (a) That a new supplemental EIS is not required and no further NEPA analysis and documentation are required; or
 - (b) Recommend to the Administrator that a supplemental or a new EIS be prepared.
 - (c) Recommend to the Administrator that an AROD be approved.
- (6) Concur with field office's determination that a proposed allowable interim action may proceed.

f. NEPA Compliance Officers (NCOs).

- (1) Develop efficient office NEPA procedures and information management requirements, and document the office's compliance with those procedures and requirements, in accordance with this Policy. Field office NCOs perform this function for field offices; this function is performed by NA-GC NCOs for program offices.
- (2) Coordinate NNSA's assistance to other DOE Departmental Elements and other federal agencies throughout their NEPA processes, including NNSA's review of documents and submission of comments.
- (3) Assist in evaluating proposed and alternative actions, including alternative mitigation measures, and make any appropriate recommendations to mitigate environmental impacts.
- (4) Provide recommendations regarding adoption of another DOE Departmental Element's or federal agency's EIS.
- (5) When another DOE Departmental Element or federal agency is involved in preparation of a NEPA document, determine whether NNSA shall be a lead or cooperating agency in consultation with the head of program office or field office and, for EISs, in consultation with NA-GC.
- (6) For actions listed in Appendix A or B to Subpart D of the DOE Regulations, make CX determinations as appropriate and approve and issue any required associated floodplain and wetland documents. These responsibilities may not be delegated. CX determinations for actions listed in Appendix B shall be documented and made available to the public by posting online, within two weeks of the determination, unless additional time is needed in order to review and protect classified

information, “confidential business information” (such as information protected by the *Trade Secrets Act* or which is otherwise privileged commercial or financial information), or other information that NNSA would not disclose pursuant to the *Freedom of Information Act* (FOIA) (5 U.S.C. 552).

- (7) For an EA, when an office makes a draft EA available for public review or comment, in addition to its usual method of doing so, post the draft on the DOE or NNSA NEPA website before the start of the public review period.
- (8) Coordinate NEPA compliance strategies for matters under the office’s purview.
- (9) Advise on NEPA-related matters, including the provisions of the Regulations, this Policy, and any other related requirements and guidance.
- (10) Recommend to the head of the office served (i.e., head of a program office, head of a field office) whether an EA or EIS is appropriate or required.
- (11) Assist with the NEPA process and document preparation.
- (12) Advise on the adequacy of NEPA documents and other related documents prepared under their purview.
- (13) Coordinate with NA-GC to file (or have it file) approved draft, final, and supplemental EISs with the Environmental Protection Agency, pursuant to the Regulations. This may be delegated to the NDM.
- (14) With concurrence by NNSA Counsel (NA-GC for program offices, Field Counsel for field offices), determine that a proposed allowable interim action may proceed.
- (15) Participate in periodic NEPA meetings and workshops. Provide NEPA training and disseminate NEPA guidance materials and related information to program office or field office personnel.
- (16) Notify NA-GC within two weeks:
 - (a) Of the designation of an NDM.
 - (b) When an office makes a draft EA available for public review or comment, a transmittal of an EA to states, tribes and, when applicable, members of the public, other federal agencies, and local governments for review.
- (17) Provide NA-GC, within two weeks of their availability, one electronic file of:

- (a) An approved EA and any FONSI.
- (b) An approved draft or final EIS.
- (c) A ROD for an EIS.
- (d) A mitigation action plan and corresponding annual mitigation report. The mitigation report may be submitted on the anniversary of a mitigation action plan or in a combined report for multiple plans until mitigation is completed.
- (e) An SA and any determination based on it.
- (f) These responsibilities may be delegated to the assigned NDM.

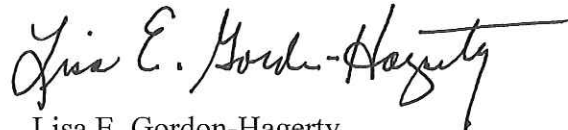
g. NEPA Document Managers (NDM).

- (1) Establish a team, representing all necessary NNSA elements and (if applicable) other DOE elements, to plan, assist in preparing, and concurrently review documents.
- (2) Conduct an internal scoping process as early as is practicable in the planning process.
- (3) For documents prepared by contractors, in coordination with the Contracting Officer (CO) and Contracting Officer's Representative (COR), develop a Statement of Work or Performance Work Statement for NEPA document preparation services based on the results of the internal scoping.
- (4) Maintain tracking systems to monitor costs of, and adherence to, the schedule for the NEPA process.
- (5) Encourage and facilitate public participation through the NEPA process.
- (6) From the initiation of document preparation activities and until a decision document (ROD, FONSI, or other similar document) is signed and issued, maintain an AR for the project.
- (7) Upon completion of the NEPA review process, provide an electronic copy of the AR to NA-GC and transfer the AR to the head of the program office or head of the field office for preservation in accordance with the organization's records management processes.
- (8) Manage the document preparation process, including reviewing internal preliminary drafts for technical adequacy, controlling cost, and maintaining schedule.

- (9) As appropriate, coordinate with the CO and COR to address contractor performance issues associated with quality, schedule, or cost.
- (10) Upon completion of the EIS, EA, or SA, evaluate any support contractor's performance for timeliness, quality, cost-effectiveness, responsiveness, and application of requirements and guidance.
- (11) Report to the DOE Office of NEPA Policy and Compliance (or successor organization) and to NA-GC on lessons learned after completing the EIS or EA.

- 9. DEFINITIONS. See Appendix A.
- 10. ACRONYMS. See Appendix B.
- 11. REFERENCES. See Appendix C.
- 12. CONTACT. NNSA Office of General Counsel, NA-GC, 202-586-8514, NEPA@nnsa.doe.gov.

BY ORDER OF THE ADMINISTRATOR:



Lisa E. Gordon-Hagerty
Administrator

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APPENDIX A: DEFINITIONS

- a. Act. The *National Environmental Policy Act* of 1969, 42 U.S. Code 4321 et seq.
- b. Amended record of decision. See “record of decision.”
- c. Categorical exclusion. A category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (section 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in section 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. 40 CFR 1408.4
- d. Analysis of Alternatives. An analytical tool used by decision makers to make technical investment decisions based on many factors such as mission gap, risk, cost, effectiveness, technology maturity, etc. Unless otherwise directed via NNSA or DOE Directive, NNSA elements must determine what projects or programs and, at what point in the acquisition process, require an Analysis of Alternatives. NNSA BOP-03.07, *Analysis of Alternatives*.
- e. Environmental assessment.
 - (a) A concise public document for which a federal agency is responsible that serves to:
 - (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
 - (2) Aid an agency’s compliance with the Act when no environmental impact statement is necessary.
 - (3) Facilitate preparation of a statement when one is necessary.
 - (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. 40 CFR 1508.9
- f. Environmental impact statement. A detailed written statement as required by section 102(2)(C) of the Act. 40 CFR 1508.11
- g. Field offices. NNSA field offices and successor organizations.

- h. Finding of no significant impact. A document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (section 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (section 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment, but may incorporate it by reference. 40 CFR 1508.18
- i. Internal scoping: The process by which the agency develops an initial framework for the document in question, including, but not limited to, purpose and need for agency action, initial set of alternatives, elements of the affected environment to be evaluated, environmental consequences, and cumulative effects. Internal scoping precedes, and does not in any way replace, public scoping required by any statute or regulation.
- j. NEPA Compliance Officer. A federal employee designated by the NNSA General Counsel (for program offices) or heads of field organizations (for field offices) to ensure that NNSA activities are performed within the requirements of NEPA.
- k. NEPA Document Manager. A federal employee designated by the head of a program office or field organization to act as the project manager for development of a NEPA document.
- l. Notice of availability. A formal notice, published in the *Federal Register*, that announces the issuance and public availability of a draft or final environmental impact statement (EIS). The Environmental Protection Agency notice of availability is the official public notification of an EIS; a DOE Notice of Availability is an optional notice used to provide information to the public. 10 CFR 1021.104.
- m. Notice of intent. A notice (usually published in the *Federal Register*) that an EIS will be prepared and considered. The notice shall briefly:
 - (a) Describe the proposed action and possible alternatives.
 - (b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
 - (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement. 10 CFR 1508.22
- n. Program offices. NNSA headquarters-level organizational elements and sub-elements that report directly to the Administrator, typically, but not exclusively, managed by a Deputy Administrator, an Associate Administrator, or an equivalent official.
- o. Record of decision. A document based on the results of an environmental impact statement that: states the decision; identifies all alternatives, including those considered to be environmentally preferable; identifies all factors considered in making the decision;

and describes any mitigation needed to minimize environmental consequences of the selected action. A record of decision may be subsequently amended based on a variety of factors; the revised document is known as an *amended record of decision*.

- p. Regulations. The CEQ *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (40 CFR 1500-1508) and the DOE *National Environmental Policy Act Implementing Procedures* (10 CFR 1021).
- q. Supplement analysis. A DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS. 10 CFR 1021.104
- r. Supplemental EIS. An EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c). 10 CFR 1021.105

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APPENDIX B: ACRONYMS

- a. AR Administrative record
- b. AROD Amended record of decision
- c. CEQ Council on Environmental Policy
- d. CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
- e. CFR Code of Federal Regulations
- f. CO Contracting Officer
- g. COR Contracting Officer's Representative
- h. CX Categorical exclusion
- i. DOE Department of Energy
- j. EA Environmental assessment
- k. EIS Environmental impact statement
- l. FOIA Freedom of Information Act
- m. FONSI Finding of no significant impact
- n. NA-GC NNSA Office of General Counsel
- o. NAP NNSA Policy
- p. NCO NEPA Compliance Officer
- q. NDM NEPA Document Manager
- r. NEPA National Environmental Policy Act of 1969
- s. NNSA National Nuclear Security Administration
- t. ROD Record of decision
- u. SA Supplement analysis

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APPENDIX C: REFERENCES

- a. 42 U.S.C. 4321 *et seq.*, *National Environmental Policy Act* (1969)
- b. 10 CFR Part 1021, *DOE NEPA Implementing Procedures*
- c. 40 CFR Parts 1500-1508, *Council on Environmental Quality Regulations Implementing the Procedural Provisions of NEPA*
- d. Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*
- e. DOE Policy 451.1, *National Environmental Policy Act Compliance Program*
- f. NNSA Business Operating Procedure 03.07, *Analysis of Alternatives*